

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1918.

No. 3189.

No. 15, SPECIAL CALENDAR.

MARGARET BUDD, APPELLANT,

vs.

UNITED STATES.

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED JUNE 12, 1918.

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Court of Appeals of the District of Columbia.

No. 3189.

MARGARET BUDD

VS.

UNITED STATES.

a Supreme Court of the District of Columbia.

Criminal. No. 32464.

UNITED STATES

VS.

MARGARET BUDD.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1

Indictment.

Filed in Open Court April 2, 1917.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, January Term, A. D. 1917.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one Margaret Budd, late of the District aforesaid, on the thirtieth day of November, in the year of our Lord one thousand nine hundred and sixteen, and at the District aforesaid, contriving and intending to kill one Mary Brodgen, in and upon the said Mary Brodgen, then and there being, feloniously, wilfully, purposely and of her deliberate and premeditated malice, did make an assault; and

that the said Margaret Budd, so contriving and intending to kill the said Mary Brodgen, a certain lighted lamp, then and there containing inflammable oil, and burning by a wick then and there descending down and into said oil, and in the right hand of the said Margaret Budd, then and there had and held, feloniously, wilfully, purposely and of her deliberate and premeditated malice, did cast and throw at, against and upon the said Mary Brodgen; and that the said Margaret Budd, with the said lighted lamp, and by so casting and throwing the same at, against and upon the said Mary Brodgen, as aforesaid, did then and there feloniously, wilfully, purposely and of her deliberate and premeditated malice, cause the said Mary Brodgen to be set afire and thereby to be burned, in and upon the head, face, neck, breast, arms, legs and back of the body of her, the said Mary Brodgen, thereby then and there feloniously, wilfully, purposely and of her deliberate and premeditated malice, giving to the said Mary Brodgen, with and by the casting and throwing of the said lighted lamp as aforesaid and by causing the said Mary Brodgen to be set afire and burned as aforesaid, mortal wounds in and upon the head, face, neck, breast, arms, legs and back of the body of her, the said Mary Brodgen, of which said mortal wounds the said Mary Brodgen, from the said thirtieth day of November, in the year aforesaid, until the said thirty-first day of December, in the year aforesaid, did languish, and languishing did live, and on which said thirty-first day of December, in the year aforesaid, and at the District aforesaid, the said Mary Brodgen, of the said mortal wounds, did die.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say:

That she, the said Margaret Budd, her, the said Mary Brodgen, in manner and form aforesaid, feloniously, wilfully, purposely and of her deliberate and premeditated malice, did kill and murder; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

JOHN E. LASKEY,

*Attorney of the United States in and
for the District of Columbia.*

3 (Endorsed:) Criminal No. 32,464. United States vs. Margaret Budd. Murder: First Degree. Witnesses: Dr. William B. Carr, Sylvester Shields, William J. Nealon, M. P., Dr. Benoni Hurst, Pansy Tabbs. A true bill: Andrew D. Loffler, Foreman.

Supreme Court of the District of Columbia.

WEDNESDAY, April 4", A. D. 1917.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

* * * * *

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washing-

ton Asylum and Jail, and by her attorney, A. W. Scott, Esquire;
 4 whereupon the defendant being arraigned upon the indictment, pleads not guilty thereto, and for trial puts herself upon the country and the Attorney of the United States doth the like.

WEDNESDAY, January 9", A. D. 1918.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited yesterday; whereupon the said jury upon their oath say that the defendant is guilty of Murder in the Second degree, but is not guilty of Murder in the first degree as charged in the indictment; whereupon said defendant is remanded to the Washington Asylum and Jail.

FRIDAY, March 1", A. D. 1918.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by her attorney, A. W. Scott, Esquire; and thereupon the defendant's motion for a new trial in this case coming on to be heard is by the Court overruled; and thereupon it is demanded of the defendant what further she has to say why the sentence of the law should not be pronounced against her and she
 5 says nothing except as she has already said; whereupon it is considered by the Court that for her said offense, the said defendant be taken by the Superintendent aforesaid, to the Asylum and Jail aforesaid, whence she came, thence to the Penitentiary (as designated by the Attorney General of the United States) there to be imprisoned for the period of twenty (20) years, to take effect from and including the date of arrival of said defendant at said Penitentiary; and thereupon the defendant by her attorney notes an appeal to the Court of Appeals of the District of Columbia, from the judgment of the Court in this case; whereupon the Court fixes the amount of bond for cost on appeal at one hundred dollars (\$100.).

Petition for Appeal in Forma Pauperis.

Filed March 21, 1918.

* * * * *

The petition of Margaret Budd respectfully shows unto the Court as follows:

1. That she is the defendant in the above entitled cause, against

whom a judgment, upon a verdict of guilty of murder in the second degree, was entered on the 2nd day of March, 1918.

2. That she desires to prosecute an appeal from said judgment to the Court of Appeals of the District of Columbia, but that, because of her poverty, she is unable to pay the costs of such appeal, or to give security for the same. That she believes that she is entitled to the redress she seeks by such appeal, and that the nature of her appeal is

6 that the trial court erred in permitting evidence to be adduced on behalf of the United States tending to show that this defendant was guilty of another crime than that with which she was charged in the indictment, to wit, the crime of adultery, and of its own motion, personally cross-examining the defendant while upon the stand, and eliciting the evidence aforesaid; and further in permitting the prosecuting attorney to refer to and mention said evidence in his argument to the jury in said trial; all of which greatly prejudiced this defendant in the minds of the jury and in the giving of their verdict.

Wherefore, the premises considered, your petitioner respectfully prays:

1. That she may be allowed to prosecute her said appeal without being required to prepay fees or costs or to give security therefor.

2. And for such other and further relief as the nature of the case may require and to the Court may seem meet and proper.

MARGARET BUDD.

C. C. MILLER,
Attorney for Defendant-Petitioner.

DISTRICT OF COLUMBIA, ss:

I, Margaret Budd, do solemnly swear that I have read the foregoing petition and statement by me subscribed and know the contents thereof; and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

MARGARET BUDD.

7 Subscribed and sworn to before me this 20th day of March, 1918.
[SEAL.]

SAMUEL E. LACY,
Notary Public, D. C.

Supreme Court of the District of Columbia.

THURSDAY, March 21", A. D. 1918.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

Upon petition of the defendant filed herein, it is ordered that the said defendant be permitted to prosecute the Appeal to the Court of Appeals in the above entitled case without payment of costs.

Memoranda.

April 3, 1918.—Bill of Exceptions submitted.

April 16, 1918.—Time to file Transcript of Record extended to, and including, June 1, 1918.

8

Assignment of Errors.

Filed May 13, 1918.

* * * * *

Now comes the defendant, by her attorney, and says that the Trial Court erred as follows:

1. In permitting evidence to be received tending to show that the defendant was guilty of a crime other than that charged in the indictment, to wit, the crime of adultery.

2. In permitting the Assistant Attorney for the United States, in his argument to the jury, to state a part of the evidence tending to show that the defendant was guilty of such other crime, to wit, the crime of adultery.

3. In questioning the defendant, in the presence of the jury, as to why she did not take a chair instead of a lamp to defend herself when attacked.

C. C. MILLER,
Attorney for Defendant.

Designation of Record.

Filed May 13, 1918.

* * * * *

To the Clerk of the Supreme Court of the District of Columbia:

Please include in the record on appeal to the Court of Appeals of the District of Columbia, of the above entitled cause, the following:

1. Indictment.
2. Defendant's plea.
- 9 3. Verdict of guilty of murder in second degree.
4. Order overruling motion for a new trial and judgment on verdict.
5. Appeal noted by defendant.
6. Petition of defendant for leave to appeal in forma pauperis and order granting same.
7. Memorandum: Time to file transcript of record in Court of Appeals extended to June 1, 1918.
8. Bill of exceptions.
9. Assignment of errors.
- 10. This designation.

C. C. MILLER,
Attorney for Defendant.

Supreme Court of the District of Columbia.

TUESDAY, May 14", A. D. 1918.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

Now comes here the defendant by her attorney, C. C. Miller, Esquire, and prays the Court to sign and make a part of the record, her Bill of Exceptions taken during the trial of the case and submitted to the Court on the third day of April, 1918, which is accordingly done, nunc pro tunc.

10 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 9, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in the case of the United States versus Margaret Budd, Criminal No. 32464, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 3rd day of June, 1918.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk.

11 In the Supreme Court of the District of Columbia, Holding a Criminal Court.

Criminal, No. 32468.

UNITED STATES OF AMERICA

vs.

MARGARET BUDD.

Murder in First Degree.

Defendant's Bill of Exceptions.

Be it remembered that on the 8th day of January, 1918, the above entitled cause came on for trial before Mr. Justice Stafford, and a jury, upon an indictment for the murder of one Mary Bragdon,

Whereupon, the United States, to maintain the issues on its part joined, produced as a witness one JAMES HODGES, who being duly sworn testified in substance that he knew Mary Bragdon in her life time, and that she was his sister; that he knew Margaret Budd; that at the time Margaret and Mary had the trouble he was living on V Street, but did not remember the number, and that he had been living at the house for two or three months, that Margaret rented a room in the same place; that he rented a room from her, a back room on the second floor; that he remembers the day on which Margaret and Mary had trouble and thinks it was November 30th, 1916; that he remembers it because it was his birthday and he intended to have a party, to which he had invited Sylvester Shields and his sister Mary Bragdon; that two others came with Shields whom he had not invited and whose names he does not know but he saw them in court on the morning of the trial; that there was no particular time set for Shields and Mary to come to the house, that he had just told them to come around about evening; that he had been working that day at Frank Crovo's, driving a wagon; that he did not remember seeing Shields when he came, nor his sister, that he must have been lying on the sofa in the back room and been asleep, as

12 he did not see them nor did he know anything of the trouble between Mary and Margaret; that they did not have any trouble that he knew of, and he knew of no trouble between them that day, nor did he know of any trouble in the house that night until later as he was asleep and had been drinking; that he does not know how much he had to drink during the day, but he got home about three or four o'clock as it was Thanksgiving and they let him off early; he had a pint with him when he got home; that he did not drink all the pint up, he knows he did not drink that much and nobody drank with him; that he did not know anything at all about what took place at the house at the time it happened. Afterward the noise outside attracted his attention, he heard hollering but didn't know who was hollering; that he got up, went down stairs, there was a crowd around, a number of policemen and a number of people but he didn't see anybody who he knew; he did not see Margaret and he did not see his sister Mary and knows nothing at all about the case. That he does not know what day it was he invited his sister Mary to come to his house that night, he saw her and told her to come down; that he didn't have any trouble with Margaret that night that he knew of, and he didn't do anything that he knew of after three o'clock that day any more "than went home and ate and laid down."

On cross-examination witness testified that the officers did not speak to him after the killing that night or the next morning, and that he was not summoned as a witness to the Coroner's inquest, and that he had no recollection of any fight that occurred between him and Margaret.

On re-direct examination witness said that the house was lighted with gas down stairs and he believed lighted up stairs with glass lamps that stood up "About that high I guess, on a table" (indicating), but that "they didn't have anything under them like that" (Indicating).

Whereupon, the United States produced one SYLVESTER
13 SHIELDS, who being duly sworn, testified that he was at the
time of the trial in custody, but that in November, 1916, he
was living on Pierce Street for a portion of the month, and on V
Street for the balance of the month, at 913; that James Hodges and
Margaret Budd, being the same James Hodges who had been on the
stand, were living there at 913 at the same time; that he had been
living there about four or five weeks at that house on the 30th of
November; that it is an old frame house with a pebble-dash front,
a store on the first floor and on the second floor two rooms and above
that one room; the witness had the back room on the second floor;
Margaret and Hodges had the front room on the same floor; the room
on the top floor was unoccupied. To get upstairs one entered from
the side way in the alley, 913 facing the street with the side to the
alley; there is no other entrance to the second floor besides the alley
entrance unless through the store, into the back part of the store and
through a little door that leads out, "and the steps go up right that
way." He particularly recalled the 30th of November, but he did
not know Mary Bragdon in her life time to have anything to say to
her but had heard Margaret speaking of her; that on the 30th of No-
vember about 9 o'clock in the evening he saw Mary Bragdon in the V
Street house; that no one was there but himself, Margaret and
Hodges, and Hodges was lying across the bed asleep. The witness did
not know whether Hodges was really drunk or not, but he had been
drinking "right smart"; he and Hodges had been drinking "right
smart" that evening together; he and Hodges used to drink together
pretty much every evening; that they didn't intend to drink too
much on that particular evening because Hodges was going to cele-
brate his birthday party; that Julian Givens and Edward Hart, and
another boy whose name he had forgotten, but whom they call
Toody, and whose right name witness then remembered was Horace
Berkeley, were to celebrate Hodges' birthday; with them;
14 Eddie's right name is Edward Harris, but "we call him Eddie
Hart". He didn't know "where Given is now". "There was
another woman there by the name of Mamie Lewis." Witness had
been in the V Street house two or three hours when Mary Bragdon
came in. Witness knows how she happened to come in; that at the
beginning James and Margaret got to fussing about the whiskey and
he jumped up and hit her and while they were fighting she pushed
him and he fell down stairs, the same stairs "that you come up", and
he missed his foot and slipped and fell down the steps, and then
this Mamie Lewis ran out and those other three fellows ran out a
little while after that: then this Bragdon woman came on the out-
side and tried like to get in, her and another one, "I don't know her
name, at least I forget it—they tried to come in and Margaret
said 'don't you come in here' and this other sister didn't like Mar-
garet anyhow; so Margaret was always telling me about it, this Mary,
they weren't good friends, good terms, and so the other one, the
tallest one, she goes off, I guess she goes off, and this Mary Bragdon
tries the door, and the door didn't come open right away and she
kind of fell against it and the door came open, and she came up-
stairs, and Margaret sayd 'Go 'way Mudgy', and she had her hand

behind her and grabbed a chair and hit Margaret before she could get many steps, and kept on telling her 'go 'way Mudge', and when she hit her with the chair the second time she took the lamp and hit her with it."

Witness had seen Mary hit Margaret with the chair and when Mary first came in she wanted to know "what Margaret was doing fighting her brother"; witness "was standing in the hallway like," "about as far as I am from you"; that in the room were a bed and washstand and a table, and about two or three chairs as near as I can remember; that the witness had been drinking but was not too drunk to n-*itce* that and had his presence of mind; that he stood in the hall all the time and continued to stand there when he saw Mary come in and take the ch-ir; that Mary struck Margaret hard enough to kind of knock her back "like that", but could not exactly

15 tell how hard it was; that he didn't see any cuts on Margaret or bruises or marks at all; that it was not the one of the sisters who didn't like Margaret who came up, that Mary and Margaret were good friends; before Mary took up the chair she rushed right up stairs and asked Margaret what she was doing pushing her brother down the steps: that witness did not see Mary push the door open; he was "standing at the bannisters looking at the door when she came in"; that the door had a night latch on it and would not stay shut unless the latch was on; that it was an old house and the door falls kind of half way open unless the latch is down; that when Mary came up the stairs she said "what are you doing pushing my brother down the steps", and Margaret said "what did he hit me for, he was fighting and I had to defend myself;" that then Mary went on in, with her hand behind her; "witness kind of thought she was going to cut her or something like that, but she didn't; she grabbed a chair and Margaret kept on telling her 'Go 'way Mudge' three or four times, and she told her that after she got the lamp."

That lamp was sitting on the table, the width of the room from the door. The room was a big room and the lamp had a globe on it; it was lighted at the time. The witness here identified parts of the broken lamp saying he thought they were part- of the lamp. He did not remember what kind of a base the lamp had but there was only one lamp in the room. Mary was about six feet from Margaret when Margaret threw the lamp; "she was just far enough away in case she had hit at her again she could not have reached her with the chair she had."

As Mary was about that distance, Margaret drew the lamp back and hit her up side of the head; the lamp was lighted when Margaret threw it; witness was standing on the steps at the time.

Before Margaret threw the lamp she said "Go 'way Mudge", but did not say she was going to throw the lamp if Mary came 16 any nearer, or anything like that; after Mary got hit with the lamp she started to run down the steps and witness "started to grab her to snatch the coal oil off her, but she ran right out in the alley and commenced to holler 'murder' ". The door in the hall was then partly open and there was not much trouble to push it all the way back. Witness thinks the top part of the lamp broke when it hit Mary on the side of the head: after Mary was hit

on the side of the head she burst into flames "Right off * * * because when the lamp struck her the chimney part burst and the oil * * * I know she lit right into a blaze."

She ran past the witness on fire all around her shoulders, a pretty good blaze. At that time Margaret didn't do anything but stand there, but after Mary went down in the alley Margaret came and stood in the doorway. Mary ran across the alley by the ice house when a couple of fellows caught her and tried to snatch the coat and put the fire out, but the coat was in such condition it just dropped right off. The alley was not a twenty foot alley but about 12 or 14 feet wide and the coat just dropped off as she got to the other side of the alley. Witness looked out of the window and saw that. That chair that Mary picked up was an ordinary straight back bedroom chair. Witness identified Mary's body at the morgue.

On cross-examination the witness testified that Mary did not come to the house until after Margaret had had the fuss with her brother; that he saw her as she came through the doorway leading from the alley; Margaret was in her room but before Mary reached the room she asked Margaret why she was pushing her brother down the steps; that the door to the room was open and Mary went in, that it was the downstairs door witness had said Mary pushed her body against to open. That witness saw Mary when she picked up the chair and struck Margaret; that the lamp was sitting on the table and when Mary came in the door — backed off back and kept telling her to

17 "Go 'way Mudgy, go 'way Mudgy", witness thought the table the lamp was sitting on was "Setting up against the wall, she got that distance and picked the lamp up." Mary and Margaret were about the same size.

Whereupon, to further maintain the issues upon its part joined, the United States then produced as a witness HORACE BERKELY who being duly sworn, testified that he worked for the District and had been for three years; that he knew James Hodges and knew him when he lived on V Street; that he remembered the night when Mary Bragdon and Margaret Budd had the trouble; that he was there that night. Shields had come by his house and invited him up there to a birthday party; that when he got there he saw Buck lying on the bed and Margaret woke him up; Eddie Harris and Julian Given were with him, but he doesn't know where Julian is; he is not in Washington, and had not seen him for over a year. Then he and Sylvester Shields went together; it was still daylight when witness came to the house and Margaret Budd was there. That Hodges is called Buck. It was the first time witness had been at the house and also the first time he ever saw Mary Bragdon, that he had no idea what time it was when he saw her that night but thinks he had been at the house an hour before she and another girl came. When Mary came in witness was coming down the steps; Mary stopped at the steps and witness asked her to wait until he got downstairs; she stopped at the steps and waited until he got downstairs and out.

That the steps are about 2½ or 3 feet wide; that witness was going down the steps alone at the time Mary was coming up and he asked

her to wait until he got down and she waited out in the alley; he went out leaving the door open as he went out; she walked in; Ed Harris had gone home at the time. He had no idea when Eddie left but he had been gone a long while; when witness got to his house Eddie was asleep and he told Eddie about what had happened. He and Eddie lived together at Marion Court and had been quite a while.

18 After Mary went upstairs something happened "she was up there a little while and she run downstairs and she was on fire." "A little while after she went up there, she was up there a little while and she ran downstairs on a light bale of fire."

She had been up there five or six minutes, witness thought when this happened. Witness heard "a scrumbling up there" and "hol-lering"; heard Mary say "God save me". He was out in the alley and could not see. When Mary came down he grabbed her. It was about five or ten minutes he thought after he heard the cry that he grabbed her; witness heard no other cries from Mary besides "Save me", but did hear Margaret say "she would try to kill the b—— if she could."

Witness doesn't know how long after he heard Margaret say that it was that he heard Mary cry "Save me" or "put me out". That he and Julian Given caught her in the alley as she came out; that she was then "a light bale of fire all over, her whole head, and it was blazing up." "I don't know how much fire there was, but I know she was on a light blaze, she was."

At the time in the alley there was another lady but witness doesn't know her, it being the first time he ever saw her; that witness didn't see Margaret any more that night but went on home after they put Mary in the wagon.

On cross-examination witness testified that he was not present as witness at the inquest before the coroner; that the officers didn't know at the time that this happened that he was there, that they didn't see him that night, and it was about three days after this that they saw him; that he could not say what Mary Bragdon said when she came to the door; that when he asked her to wait until he came down, she said she wanted to see her brother; said nothing about Margaret; that he didn't hear one of the girls say they were going to kill that black b——; that he did not know Margaret before this time; that Margaret and Buck were up-
19 stairs; that the scrumbling which he heard before Mary came had sounded something like they were fighting up stairs.

Whereupon, to further maintain the issues on its part joined, the United States called EDWARD HARRIS, who being first duly sworn testified his name was Edward Harris, but was sometimes called Eddie Hart; that he knew Horace Berkeley and had known him for 16 or 17 years, also Sylvester Shields for about the same time, and Buck Hodges for about three months before the killing; that he was at the house the night the trouble happened, having been invited by Hodges to a birthday party; the house is located on V Street between Vermont Avenue and 10th Street, over a grocery store. Present there were the witnesses, Horace Berkely, Sylvester

Shields, Julian Given, and the lady's name in this case, "I forgot her name"; that Julius, the witness heard, had gone away to Pittsburg, but he didn't know where he was at the time of the trial. Witness thinks it was about 5.30 when he got to the house that night and he left about a quarter to 7 by himself, because the fuss had started "between Margaret Budd and this Hodges sister." Saw Hodges' sister and Margaret at the foot of the steps in the alley, came from the alley to go up stairs to the apartment; they were going in from the street about a quarter after six or something like that, witness had been there nearly three-quarters of an hour.

That "there wasn't any fuss in the alley at all; the two sisters came to the door and Margaret hollered 'who is that?' Pansy they call her, she said 'I want to see my brother', she says 'Don't you come up here', that is what Margaret said."

"Yes, Margaret Budd says, 'Don't come up these stairs, and Pansy, I think it was, was the one that said, 'I have a right to come where my brother is.' She said 'Don't you come up here,' and at that time I said to Harris, 'Come on out, there is going to be
20 a fuss'; and he says "I am going out', and he came on downstairs, and they were still down at the bottom of the steps, and she was at the top of the steps.

Margaret Budd was at the top of the steps, and that she called down and said 'don't you come up", she seemed to be angry; she talked like she was angry at the time; witness went on out of the house and when he got down the stairs Mary Bragdon was outside in the alley; witness knew nothing of what happened after that until Horace Berkeley got home and told him the girl got burnt; "that Margaret Budd threw the lamp on her and that he had to put it out." When witness left Hodges was lying across the bed and Shields was upstairs seated at the table in the back room, the kitchen table; they had been playing cards. Hodges was lying on the bed in the front room. There were two lamps in the house, one on the kitchen table and the other on a little stand in the front room; one was a small lamp and the other was a lamp they put a globe on; the one in the front room was the larger lamp; the lamp in the kitchen "had a piece like that" (Indicating): witness identified parts of lamp that were in front room; the one in front had a globe.

On cross-examination witness testified that he could remember which lamp was in the kitchen; he could "identify that, but of course there are a lot of lamps like that;" that he was not there when the trouble took place and could not tell which lamp it was that was used in the trouble; witness again indicated the lamp that resembled the one that was in the kitchen. Witness again stated that as he went out two of Hodges' sisters were outside of the door.

Whereupon, to further maintain the issues on its part joined, the United States produced as a witness, PANSY TABBS, who being duly sworn, testified that she is the sister of Mary Bragdon, and had known Margaret a long time, ever since she was "about that high"; that Margaret was heavier than Mary, but Mary was taller than Margaret; that on the night that Mary was hit with the lamp witness

21 was across V Street; that she happened to be there because her sister said her brother had invited them all to the house to a birthday party; witness said she would not go in but would walk up with Mary; that at that time witness was living at 1520 5th St., but at the time she testified at 1625 3rd St. About 7.30 witness thinks they started around to the V Street house in the evening. James lived with Margaret there. Witness did not know how long they had been living there, nor in what room; that witness had never been in the house until she went in that night "with the fellows"; it was dark that night when she and her sister Mary came to the V Street — and her sister went to the side door, and she walked over with her; that nothing happened at the side door but her sister rapped and Margaret came to the door and said "that damn old Pansy, she is not coming in here". Witness was not going in anyway so she walked away; her sister went back and in the side door as Margaret turned in. When Mary went upstairs witness was standing across on the other side of the Street and did not see Margaret any more at the time; the next time she saw her sister, Mary said "I am going over there." They were fighting or something upstairs and she says 'I am going over there'. "I says, 'Well, go ahead.' She was not in there more than three minutes before she came out in a light blaze."

Witness knew they were fighting upstairs "because the clock or something or another came through the window and she went over there and she said that she was going over there".

Witness did not know who was up the stairs at the time of her own knowledge; that between the time her sister left her and went up and the time she came out in a blaze, witness heard no outcries, only saw the light blaze upstairs and somebody "hollered the house is afire." Other than that she heard nothing; a few minutes after witness saw the blaze upstairs and heard the cry that the house was on fire her sister came out "all in a light blaze", all the front
22 part of her"; that at that time witness did not see Margaret, but started to the station house and met two policemen and a colored boy and came back and by that time Margaret and all of them had left the house; the door was fastened and there couldn't anyone get in; after that she found Margaret around at the back alley, she and the two policemen together; they didn't know who she was; that Margaret got on V Street "she then said that she wanted to throw one on me and she would do it again, and even if she got twenty years, she was not giving a God-damn." That at that time Margaret had on a long kimona and a towel or rag or something on her head; she had been drinking right smart; that witness saw no cuts or bruises on Margaret.

Witness thought Margaret was "about a head, or maybe a head and a half taller than Mary was."

On cross-examination witness testified that she was not known as Aggie Tabbs, but as Pansy Tabbs; that she testified at the coroner's inquest, that she remembers testifying she saw her sister coming out in a heavy coat with the coat on fire, but she didn't say that was all she knew about it; that she testified at the coroner's inquest the same as she testified here "I said the same over there": That she and

Margaret had not been on good terms for a long time; that she had not liked Margaret for a long time; that the statement that Margaret made that she would throw one on witness and would do it again was made at the station house to the officers in her presence, and in their presence, and those were the words Margaret used; that she accompanied Mary Bragdon to the house on that night because she was Mary's sister, and just walked around with her; that the reason she walked to the door was not because she expected trouble but "just like anybody else would walk some place with somebody"; witness had seen Margaret and her sister together, "not often, but two or three times"; didn't see them together the day before but had seen

23 them together about two or three weeks before and from that time had heard nothing that caused them to be unfriendly.

Witness does not know Eddie Harris, nor did she see him that night. Whereupon, on request of counsel, Harris stood up in the court room and witness said she did not see him; he did not come out of the door while she was standing there; that witness did not leave until Margaret told her sister to come in; that witness did not go home and did not stand right at the door until the trouble began, but went over on the other side of V Street, witness was told that they were fighting up stairs, but she did not then come back, nor was Mary up there when they were fighting the last time, she went up twice, Mary went up after the fight between Margaret and her brother.

Witness further testified that Margaret was coming along with her mother and a little colored boy when witness identified Margaret to the officers, in the directions of Margaret's home towards V street; that Mary made two trips to the house, and that witness was with her on both occasions; that the last time Mary went upstairs herself, went to the house by herself. Witness does not know how Mary got in; she turned the knob and went in; that witness was standing across the street on the other side of V Street at the time that Mary turned the knob and went up; the door pushes in.

Whereupon, to further maintain the issues on its part joined, the United States called as a witness LUCILLE CLARK, who being first duly sworn, testified that she is married and has two adopted children, and was at that time living at 916 V Street, Northwest, where she had been living for about the past six years; that she was not related to James Hodges nor did she know him, knew Mary Bragdon or Mary Hodges only when she saw her; so with Pansy Tabbs, neither did the witness know Margaret Budd, but thinks she does know her when she sees her, and thereupon did indicate Margaret Budd in court; knew that Margaret was living at 913 V Street,

24 Northwest, in 1916, and remembered the occasion when Mary Bragdon and Margaret Budd had trouble at Margaret's house; the date was Thanksgiving, 1916, and thought that it was somewhere in the neighborhood of half past seven, or between that and eight o'clock; that the trouble occurred; that she was at the time upstairs in her house, in the front room, and saw the girls come up the street a few minutes before the trouble; they were talking very loud, seemed about three or four of them together, and

thier talking attracted her attention; witness was dressing to go to church and raised the window; they stood in front of her door and she heard the sister that was in court at the time say "I don't think I will go in there, I don't think I would," they then backed up against her gate; witness put the window down and came down stairs, and it seemed to her that another gentleman was there with the sister, he said "You are invited to a birthday party"; a few minutes afterwards it seemed to witness, Mary Bragdon went in and up stairs, as it appeared to her; that she didn't know where she went, only that she went in the house. The other girl stood in front of the house across V Street, and the witness stood in her door across the street and continued to stand there because they were in front of her door, and other people began to gather. At the time the girls were coming down the street witness did not know where Margaret Budd was; did not notice that closely to see whether she was there or not; but when she looked out there were three or four people together; people from the outside began coming up the street and witness could not tell how many were together because there were other people behind them.

Witness did not see Mary after she turned the door and went in the house, but stated "A short while after she was in there I heard someone crying for help and hollering murder, and 'open the door', and 'put me out', and 'I am burning up', and I said to one of the men to run over and see if they could help, and I could see the place like some one was burning."

25 It was not very long after Mary went up stairs she heard this; she had no clock but Mary "had not been in there but a very few minutes. It didn't seem to me over 15 minutes; of course, I did not time myself by a clock."

After Mary hollered "Some one in the crowd opened the door and then she rolled out into a blaze of fire, and the men began to tear her clothes off her and tried to put her out."

Witness did not know Eddie Harris and Julius Givens by name, just saw them there when Mary was burning; after they had put Mary out witness saw Margaret downstairs in a night dress or a light kimona and saw her go up the alley where she stayed a long time; then witness called into the crowd for some one to get the patrol wagon and take the girl to the hospital, that she could not walk. Someone said she was going to walk and one of the men started to take her by the arm and lead her when witness said "she is not able to walk, get the patrol wagon." Then some of the boys ran to the station house and the officers came and took hold of her. It was quite a little while after Mary came out of the door that Margaret came out and went up the alley, because they had torn off Mary's clothes and put her out; as near as witness can guess, it was about "15 or 10 minutes, or something like that." After Margaret came out and went up the alley, witness saw her come back up the alley with a little short lady whom Margaret said was her mother.

"The officers had her by the arm and she said, 'I have done what I intended to do, and I don't give a G— D— what they do with me,' and the officer says 'It is an awful thing to burn a woman up

like that', and she says, 'I have done what I intended to do, and I don't give a G— D— what the law does.'

"She told them to turn her loose and let her get her hands on the sister, and she would be willing for the law to take effect, that she intended to kill both of them."

26 On cross examination witness stated she was not a witness at the coroner's inquest, nor did she know why she was not summoned there. She was right "out there when this thing happened"; that Pansy Tabbs was standing there when Margaret made the statement she didn't give a G— D—, and so forth, but that witness did not know whether she was paying any attention but that she was right there in the crowd but not so near as the witness. Witness cannot state exactly how far away Pansy was from Margaret and didn't pay any particular attention to that matter; the witness was referring to Pansy when she told of the incident of three or four talking while they were coming towards Margaret's house, they were talking loudly, but they did not seem to be angry to the witness; that she did not understand what they were talking about, but Pansy stood in front of witness' house, and that one girl suggested to the other not to go over; that Pansy did not go over to the house because she stood right in front of witness' house. After the sister came out, she went over. Pansy was in the alley at that time, but does not know whether she remained in the alley or not. Margaret was arrested coming through the alley from Douglas Street. Pansy left the neighborhood at the time the boys opened the door and took off to run, witness thinks, "when they hollered to get the patrol wagon, it seems to me she went toward the station house."

Whereupon, to further maintain the issues on its part joined, WILLIAM J. NEALON, was introduced as a witness by the United States, and after being duly sworn testified as follows: that he was a member of the Metropolitan police force and detailed at No. 8 Station house; that he had been a member of the force for about eleven years and a couple of months; he arrested Margaret Budd on November 30th, Thursday evening, 1916, between 7.30 and 8.00 P. M., in

27 Union Court, Northwest, between V & W Streets, and 10th Street and Florida Avenue, that witness was at the station house as emergency man from 4 to 12, and about 7.30 as the result of information received he ran out of the station house as fast as he could to V Street house and found Mary Bragdon burning. At the time she was in the alley, being held by a boy and a woman who had turn her coat off "and she was blood all over the face and also her breast, and I asked where the defendant was." Mary was there "with blood streaming down her face and from her breast, from her waist up."

Witness did not know Pansy Tabbs before that night, but saw her then; not just as he got there, as he paid attention to the woman that was burning and told Pansy to hold on to her, that the wagon would be there in a moment, and take her to the hospital. The wagon did come in a moment and took her to the hospital. After a little search with two more officers and a lieutenant of the force,

Margaret Budd came south off Douglas Street through a little alley that leads off the alley into Union Court. Officers Gilfoyle and W. E. Holmes and Lieut. Wilson were with witness. There were many other citizens around there trying to locate Margaret. The officer saw her with her mother as they came along with locked arms. Margaret had on bedroom slippers and a kimona, and was placed under arrest right there by officer Gilfoyle; when she got as far as the door of the house at 913 V Street, she wanted to go up stairs to put her clothes on but was not permitted to go upstairs; she was told that if she was dressed enough to go out on the street she would have to go that way to the station house. "We asked her on her way to the station why she burnt this woman, and she said she did burn the b— and she would do it again; she did not care if she served 30 years or even a hundred years. That was the conversation between herself and the sister of the girl that has died." The sister was Pansy Tabbs, Pansy was about as far as from here to you."

28 Witness stated that he could not say that Margaret was drunk; that he did not smell liquor on her, but she was very much in rage and temper; that when witness went up stairs to see if Margaret was there, after he attended to the burning woman, he found the burner and the wick of the lamp on the floor, and the wick was still burning; and he blew it out. That there was a little table, perhaps 2 x 4 in the room; that some little fancy cups and saucers were on the table, and as witness recollected a chair on each side of the room, and there was a little old bed in the corner. The room had a kind of a sloping roof, and near the bed was an empty pint bottle on the floor. This was the front room. Witness also went into the kitchen and back room, and found a lot of bottles and glasses on the table, and dishes that had not been washed. There was no light in there and a light was made. Witness found nothing broken in the kitchen, and the burner that was still burning was on the floor in the front room. The lamp was all broken and with relation to the table in the room, the pieces of glass were right alongside of it. Witness wrapped up the pieces of glass found and the burner and the towel, taking the same to the station house. The two chairs which were just alongside the table were ordinary small bedroom chairs, they were not broken and except for the glass that witness picked up he saw nothing broken in the room. Witness did not see any other chair besides the two chairs mentioned in the room, and said: "There was no chair lying down on the side. I am positive of that", and that the table was not tipped over or broken "because some of the dishes were on it. The table was not tipped over". That on the table "there may have been altogether, cups and dishes and all, perhaps a dozen". They were not broken so far as he saw, but were "undisturbed."

Witness further stated that when he got there Hodges was not up stairs; there was nobody up stairs; that somebody went up with him for the girl, whoever it was, witness could not say. On cross-examination witness testified that Shields was summoned as a witness at the coroner's inquest; that he had not testified in his direct examination that cups and other things were broken; that he thought it could not have been more than five minutes at

the longest after the trouble occurred that he entered the premises; that the burner was right by the table and the table was sitting practically two or three feet from the front of the bedroom right by the front window; that he testified at the coroner's inquest and there stated that the girl made the statement about her burning Mary; that she did what she intended to do or something to that effect; that he did not examine the door to the premises particularly, he did not know whether it was a snap lock or one that turned, but to the best of his knowledge there was a night latch. On re-direct examination witness testified that the downstairs is occupied by a store in the front room and one has to go out the side and up the stairs that way. That the stairs were not more than $2\frac{1}{2}$ or 3 feet wide, and to the best of his knowledge the front room might have been 14 x 12 feet.

Whereupon, to further maintain the issues on its part joined, the United States produced as a witness WILLIAM M. GILFOYLE who being first duly sworn, testified that he was a member of the Metropolitan Police Force, and detailed at No. 1 precinct; had been a member of the force $14\frac{1}{2}$ years; that he had occasion to make investigation of the alleged killing of Mary Bragdon by Margaret Budd, in which investigation he was assisted by officers Nealon and Wilson, that he received the assignment about the time it happened; that he happened to be in the station house at the time some parties came in and stated there was trouble on V Street; the officers all rushed around there and "We found Mary Bragdon outside in the alley. She was very badly burned and blood was streaming down her face, and we found out that a lighted lamp had been thrown on her by this Margaret Budd, and we made a search in the

30 house for Margaret Budd while the patrol wagon came and got this other woman and took her to the hospital."

The blood was streaming down her face as the result of the burns and there did not appear to be any other cuts on her.

Witness went upstairs and described the *stpes*; the door leading to the stairway opened from the alley; one stepped inside the doorway from the alley, and the stairs turned to the right going right up on the alley wall; there is a door leading to the front room and turning to the left there is a door leading to the back room. There are two rooms and the store underneath. The room in front is a medium sized room, the back room rather small. There was somebody in bed in the back room, which did not seem to have been disturbed to any extent. The front room looked as if there had been some tussle or something. The alarm clock was on the floor near the center of the room, and the bed was pretty badly mussed up; there was a pocket-book belonging to Mary Bragdon on the floor, and the lamp was broken with the wick still burning. The lamp was scattered about the floor. In the room there were a bed, an old dresser, a couple of chairs. Two windows of the room faced on V Street, and one on the side. The broken lamp was scattered about the floor a great deal and the pieces were gathered up and taken to the station house. Some time after leaving the house witness saw Margaret Budd coming south through the alley, apparently coming back to the house, dressed in house slippers, with a kimona or light wrapper on; witness

did not think she had any stockings on; she may have been drinking but witness would not say; she was not noticeably intoxicated, and when asked if he had any conversation with Margaret as to why she had done it, witness said:

"She began to talk about it as soon as she was arrested and she said she was glad she had done this and she had been after this woman for years, and she said 'If you let me go I will get the other
31 one too,' meaning the sister." The sister was Tabbs; he did not remember her first name; at that time Margaret was in alley and she continued to make the same remark even after she was taken to the station house. She was very disorderly at the station house. She said she was glad she had done it and didn't care how long she had to serve and if she got out she would finish her if this didn't finish her."

On cross-examination witness stated that the defendant said If she got out she would finish Mary Bragdon, that Mr. Nealon was along when she said it; that he must have heard the remark also; that the defendant seemed to be very much excited; that he would not say she had been drinking, although she might have been.

Whereupon, to further maintain the issues on its part joined, the United States produced as a witness Lieutenant JAMES E. WILSON, who being first duly sworn testified that he was a member of the Metropolitan Police Department, detailed at Headquarters, and had been a member for 17 years, had occasion to be present at house of Margaret Budd, and that he heard her say "She had done it and she wished she had killed the G— D— B— and if she got out she would; and she also threatened another woman. She said if we would let her loose she would fix her business too.

Witness stated the woman was on fire and had been put out; her face and breast were burnt. On cross-examination witness testified Mr. Gilfoyle and Mr. Nealon came back through the alley; that the officers were looking for Margaret Budd; that she had left the house after the act had been committed; that the other officers were present when Margaret made these remarks, and that she made those remarks several different times on the way to the station house, and also in the Station house, and that witness believes all of the officers
32 were present when the remarks were made. On re-direct examination witness testified Officer Holmes was in the station that night.

Whereupon, to further maintain the issues on its part joined, the United States produced as a witness WILLIAM E. HOLMES who being duly sworn testified that he was a member of the Metropolitan Police Department, had been a member for 14 years, and was in No. 8 precinct, the night Margaret Budd was brought to the station house by Officers Gilfoyle and Nealon; that at that time he heard her say that "she had done what she intended to do for a year if she had an opportunity, and if she didn't die this time she would fix her later when she got out of this trouble, that she was glad she did it." On cross-examination witness stated he was using the exact words of the defendant as near as he could recollect them, that she said she was

glad she did it, and if she did not die this time she would do it again if she, meaning the defendant, got out.

Whereupon to further maintain the issues on its part joined, the United States produced as a witness Doctor WILLIAM B. CARR, who being duly sworn testified that he was the deputy coroner at the District of Columbia; that he held the position on the 2nd day of January, 1917, that on that date he performed the autopsy on the body of Mary Bragdon; that through that autopsy he determined the cause of death to be burns of the 2nd and 3rd degree of the thorax, the chest, the interior and sides of the chest, back of the chest, the face and neck and subsequent toxemia and shock. Witness then described the burns of the 1st and 2nd degrees, and on cross-examination witness testified he had not known Mary Bragdon prior to his performing the autopsy.

Whereupon PANSY TABBS was recalled by the United States and testified that she saw and identified her sister's body at the morgue at the time of the coroner's inquest.

33 And next thereupon to maintain the issues on her part joined, the defendant, MARGARET BUDD, having been duly sworn, in her own behalf, testified in substance as follows: That she was 22 years old, and had been knowing Mary Bragdon all her life and had been friendly with her "clear up to the night this trouble happened." That they used to see each other quite often and had been downtown together on the day before the trouble when Mary Bragdon had got a stove and left it at Margaret's house; that they went downtown and came back together and separated on good terms.

"Q. Now getting down to the night of the trouble, in your own way will you tell the Court and jury, starting from the beginning, just how it happened. A. Well, on November 30th, 1916, I had a birthday party for James Hodges and all of them had been drinking, and James Hodges wanted to buy some more whiskey and I objected, and he got angry and smacked me and I slapped him back, and by his being drunk, his foot slipped, and then his sister taken hold of the knob of the door and she fell against the door and broke the door and she said 'You black bitch, you knock my brother down the steps and I'm going to kill you,' and I walked across the floor and I asked her three times, and she picked up a chair and struck me across the shoulder, and the second time she drew the chair back and hit me I threw the lamp, and threw the lamp to defend myself.

Q. Did you stand in one place or did you move? A. I backed back, I backed back to the wall.

Q. Where did you get the lamp? A. I got the lamp off the stand, and the stand was against the wall.

Q. Were you anywhere near the table when you picked up the lamp? A. Like this would be the stand and the post here,
34 I picked the lamp off the stand."

Witness testified she had not expected to have any trouble with the girl that night, and that after the trouble she did not ex-

press herself as being happy over what she had done; that she went to her mother's house on Florida Avenue, and on her way back was about 20 feet away when she met officer Nealon and he asked for her and she asked him what he wanted and he told her and she was taken to the station house.

On cross-examination, defendant testified in part as follows:

By Mr. Leahy, United States Attorney (Assistant):

"Q. How long have you known Mary Bragdon? A. I have been knowing Mary Bragdon all my life?

Q. Did you not just know her since you started to live with her brother? A. No, we were from the same home.

Q. Did you know her when you were living with your husband? A. Yes, before I married my husband.

The Court: Who was your husband? (Witness did not answer.)

By Mr. Leahy:

Q. You had not lived with your husband for a year, had you?

Mr. Scott: I object to that. That has nothing to do with this case.

The Court: The court asked you a question. Who was your husband, do you mean Hodges?

The Witness: No, I mean Louis Walter Budd, the man I married."

Witness testified that she knew Mary when she was living with her husband, going to her house occasionally, but that she did not make a practice of going there all the time, but would go there sometimes when they would go to the moving pictures together, that she knew

35 Mary all her life but did not go to her house very often; that the chair was not broken that Mary hit her with; that nothing was knocked off the table; that she backed to the wall.

"Q. You backed off towards the wall, did you not, to get the lamp, you backed towards that part of the wall where the lamp was standing? A. I backed to the wall and of course after she struck me with the chair the second time, I threw the lamp to defend myself.

Q. I say you backed to the wall where the lamp was? A. I didn't back intentionally to throw the lamp.

Q. You did walk back to that part of the wall where the lamp was standing? A. I did not walk back intentionally to throw the lamp.

Q. Answer my question. A. I didn't walk back intending to throw the lamp.

Q. Why did you not walk to the other end of the room? A. She had me blockaded.

Q. You didn't have to back back to where the lamp was. A. I didn't back intentionally to where the lamp was.

Q. How did you pick it up then? A. Because I was standing close to it.

Q. And you backed to where it was? A. No.

By the Court:

Q. Was there any other chair there? A. There were two straight chairs there.

Q. Except the one she had? A. Yes, sir.

Q. Why did you not take one of those chairs? A. There wasn't any way in the world—— (Witness failed to complete answer.)

Q. Why did you not take one of those to defend yourself
35 with? A. There wasn't any way I could move.

Q. You mean to tell me you could not have picked up one of those chairs? A. If I had—— (Witness again failed to complete answer.)

Q. Where were those chairs? A. The chairs were too far from me.

Q. Where were they, were they not right beside that table? A. No, because there were two windows.

Q. Tell the jury where those other two chairs were? A. I could not tell exactly where those chairs were.

Mr. Scott: I want to note an exception to your Honor's question as to why she did not take the chair instead of the lamp to defend herself.

Which exception was duly allowed by the court and noted in its minutes.

In response to a question as to why she did not call on Shields, witness stated she did not see Shields at the time. Witness further stated she did not think it was necessary to throw the lamp; but the lamp was the only thing she could get her hands on. It was the only thing she could get a hold of to defend herself. Witness further stated she was sorry she had done this, that she was good friends with Mary, that she had said that she was sorry many times and had told the police nothing the night she was arrested.

And thereupon the attorney for the defendant announced that the defendant rested, and the attorney for the United States did likewise. The foregoing is the substance of all the testimony introduced in the case.

And next thereupon defendant, by her attorney, prayed the court to give the following instructions to the jury:

37 No. 1. "The court instructs the jury, that in order to establish self defense, it is not indispensable that there should have existed actual and positive danger at the time of the homicide; that if they find from the evidence that the deceased, at the time of the homicide, assaulted the defendant in such a way as to induce in her a well grounded and reasonable belief that she was in imminent danger of suffering death or great bodily harm, then the defendant was justified in using such force as she had reasonable ground to believe, and in fact did believe became necessary for her to use in the defense of her life, or to save her person from serious bodily harm, even to the extent of inflicting a fatal blow, which blow resulted in the death of the deceased.

No. 2. "The jury is instructed, that if the defendant was where

she had a right to be, when the deceased advanced upon her in a threatening manner, and with a deadly weapon, and if the accused did not provoke the assault and had, at the time, reasonable grounds to believe, and in good faith believed, that the deceased intended to take her life; or to do her bodily harm, she was not obliged to retreat, nor to consider whether she could safely retreat, but was entitled to stand her ground and meet any attack made upon her with a deadly weapon in such way and with such force as, under all circumstances, she, at the moment, honestly believed and had reasonable ground to believe, was necessary to save her own life or to protect herself from great bodily injury, this is justifiable homicide and you should acquit.

No. 3. "The jury is further instructed that a man's house is his castle and that he has a right to protect it from intrusion and attack when a person is attacked in his own dwelling he is not required to retreat, but may stand at bay and kill his assailant to save his own life or to protect himself from great bodily harm and this is justifiable homicide or self defense.

38 No. 4. "If the jury believe from the evidence that the defendant had remonstrated with deceased against coming into the said room which she rented, and that such verbal remonstrances were of no avail, and that the deceased, on the occasion of the homicide, broke in the door and was approaching defendant in said room, and from the acts of deceased, or from her words coupled with her acts, it reasonably appeared to the defendant that her life was in danger or that she was in danger of serious bodily injury at the hands of deceased and that while such danger was imminent and pending, and because thereof defendant killed the deceased with the lamp, then you will acquit defendant on the grounds of self defense.

No. 5. "The court instructs the jury that, if you believe from the testimony that this defendant was assaulted in the manner which she has detailed, and that provocation was sufficient to cause her to lose control of herself, and throw herself into sudden passion, and in that passion, she struck the fatal blow without malice, then you will find her guilty of manslaughter."

And the court granted said prayers. And next thereupon the case was argued to the jury by counsel for the United States, and during the course of said argument the following occurred:

"Mr. Leahy: The evidence shows that this was a married woman, that she had a child——

Mr. Scott (interposing): That is objected to. It is highly improper, whether this woman was a wife and also had a child. We objected at the time because it was highly improper. They were not so friendly then. There is no evidence that they were friendly——

The Court: As to credibility, it is always competent for the jury to consider.

Mr. Scott: An exception is noted to your Honor's ruling.

Which exception was allowed by the Justice and duly noted in his minutes.

And next thereupon the court charged the jury as follows:

39 The Court (Mr. Justice Stafford): "Gentlemen of the jury, you have heard the instructions which were granted to the defendant and read in your hearing. They are sound propositions of law and should be your guide in this case. I do not need to say very much to you in addition to this, but I will call your attention to the method in which you ought to approach the decision of the case.

This defendant is charged with having killed Mary Bragdon, and the first question is whether she did kill her. It is alleged that she killed her by throwing this lighted lamp against her. Are you satisfied that she did throw it and strike her with it, and that as a result thereof Mary Bragdon was burned and died of the burns? If you are satisfied of that, then that point is established, that she did kill her.

If you find that point established, the next question is whether she did it innocently. It is not claimed that it was done accidentally but it is claimed that it was done by her in self defense, and if it was done by her in self defense, as that is permitted under the law, then she killed her innocently and ought to be acquitted, and in the regular way of taking up the case, you ought to consider that question next.

The rule of self defense is correctly stated in the instructions granted and impressively read to you by counsel. Was the defendant being assaulted at the time? That is a question of fact for you upon the evidence. It is said, or the instruction says, 'if the defendant was being assaulted with a deadly weapon,' and the evidence in the case, some of it, tends to show that she was being assaulted with a chair, and the chair has been described, it is for you to say whether that was a deadly weapon or not, in the way in which it was being used, or threatened to be used in the hands of the deceased. Was it a weapon which, in her reasonable apprehension, might cause her death or cause her great bodily harm? If so, and
40 if the defendant reasonably apprehended, under the circumstances, as they then appeared to her, that she was in danger of being killed or being seriously injured, she had a right to use any means of defense at hand which appeared to her reasonably necessary to save her own life or to save herself from serious bodily injury; that was her right; that was her only right. She had no right to go beyond that.

Now, in doing what she did, did she go beyond that? In the first place, did she really believe that her life was in danger, or that she was in danger of suffering great bodily injury at the hands of Mary Bragdon, and did she believe that it was necessary for her to take the lighted lamp and hurl it against the head of Mary Bragdon? At the time did it reasonably appear to her to be necessary to do that? These are the questions you are to consider, and the law, as I said, is correctly stated in the prayer, taken as a whole, and you ought to take it as a whole.

I will read the first instruction to you again, after these comments, so that you may have the proposition in its entirety.

'The court instructs the jury, that in order to establish self defense, it is not indispensable that there should have existed actual and positive danger at the time of the homicide; that if they find from the evidence that the deceased, at the time of the homicide, assaulted the defendant in such a way as to induce in her a well grounded and reasonable belief that she was in imminent danger of suffering death or great bodily harm, then the defendant was justified in using such force as she had reasonable ground to believe, and in fact did believe, became necessary for her to use in the defense of her life, or to save her person from serious bodily harm, even to the extent of inflicting a fatal blow, which blow resulted in the death of the deceased.'

Now when you have applied that law to the facts as you have found them in the case, was this a justifiable homicide? If
41 it was, or if you have any reasonable doubt about it, you ought to acquit her. But if you are satisfied, beyond a reasonable doubt, that it was not a case of self defense, within that rule, then you can not find her not guilty and then you will approach the question whether it was not manslaughter rather than anything more serious.

If she was being struck, and if she had been struck by the deceased and thereby enraged, and in the hot blood engendered by the assault, she struck her with the lamp, even though she might have intended to kill her, even if she did intend to kill her it would be manslaughter only, if that was all there was to it, simply an act in hot blood, in hot passion, caused by the assault that was being made upon her. But if she was already enraged, and the rage which prompted her to hurl the lamp was not caused by the blow then inflicted, then of course it is not a case of manslaughter. So there is a question of fact; did she hurl the lamp at the deceased in hot blood engendered by blows or by a blow then and there received by the assault that was then and there being made upon her, so that she did not act in malice, but only in the anger of the moment? Upon that question you have a right to consider all the evidence in the case, including all that you find the defendant, herself, said about the matter, if you are satisfied she did say anything about it.

If you are satisfied, beyond a reasonable doubt, that it was not a case of manslaughter, but that there was actual malice, and that, if she acted in rage, it was rage she had before she was assaulted, and not rage caused by any blows received by her at the time, then you come to the next question, whether it was murder in the second degree, rather than murder in the first degree.

If you find that she was not justified, under the rule of self defense, and find that it was not a case of manslaughter, but find that she intended to kill this girl and had malice in her heart against her when she hurled the lamp at her, then it is murder in the
42 second degree, and it is murder only in the second degree unless it appears from the evidence in the case that the intention to kill the deceased had been formed deliberately and as a result of premeditation. If you find these elements in addition, then it is murder in the first degree.

If you find from the evidence in the case, when you have considered it all, that the defendant had made up her mind to kill this girl when opportunity offered, had deliberated upon it and meditated upon it and had made up her mind to do it, and simply seized this as an opportunity to carry out a premeditated and deliberate purpose which she entertained and had entertained, then it would be murder in the first degree.

Now does the evidence satisfy you beyond a reasonable doubt that she had that purpose in her heart, that she had a deliberate and premeditated intention to kill the girl, and that she hurled the lamp against her as a result of that premeditation and deliberation, and with that malicious, deliberate, premeditated purpose in her mind at the time entertained by her before that time? If you are satisfied beyond a reasonable doubt that that is the truth of the case, then you are bound to find her guilty of murder in the first degree, but if you have a reasonable doubt about the elements I have just spoken of, then it would be murder in the second degree only.

The presumption of innocence goes along with the defendant through all of these stages, and requires you to find in the first place, beyond a reasonable doubt, that she killed the girl; in the second place that she did not do it innocently or as a matter of self defense, or if you can not find that, or if you have not any reasonable doubt about that, it requires you to take up the next question of manslaughter, for that is the next mildest degree, and see whether or not it was not manslaughter, and if the evidence requires you to go beyond that, then you are to stop at murder in the second degree, unless you are satisfied beyond a reasonable doubt that it was murder in the first degree. It is only as the evidence removes the doubt in your mind, step by step can you reach a verdict.

You will be governed by your reason, and your reason only, and you are to render a verdict in strict accordance with your honest convictions from the evidence.

As to the witnesses, you are the judges of the witnesses. You are to judge which witnesses are worthy of belief, and you are to say how far you believe the witnesses. You may believe a part of what a witness says, and not the whole of what he says. That is entirely for you, in your good judgment. No matter which side has produced the witness, the duty of the jury is to consider how far the witness has spoken the truth.

You may take the case."

Thereupon the jury retired to consider their verdict, and thereafter returned a verdict of murder in the 2nd degree.

All exceptions herein stated having been duly taken, allowed, settled and noted during the trial before the jury rendered its verdict, the defendant presents to the Court, this her bill of exceptions and prays the court to sign and seal the same and make the same a part of the record, to have the same effect as if each of the said exceptions was contained in a separate bill and had been signed and sealed during the trial, and the same is accordingly done, now for then, this

the 13th day of May, 1918, the undersigned considering the case to be one that requires a full statement of the trial and evidence as above given.

WENDELL P. STAFFORD,
Associate Justice Supreme Court,
District of Columbia.

Endorsed on cover: District of Columbia Supreme Court. No. 3189. Margaret Budd vs. United States. Court of Appeals, District of Columbia. Filed Jun- 12, 1918. Henry W. Hodges, clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
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Henry W. Hodges
clerk

IN THE

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OCTOBER TERM, 1918.

No. 3189.

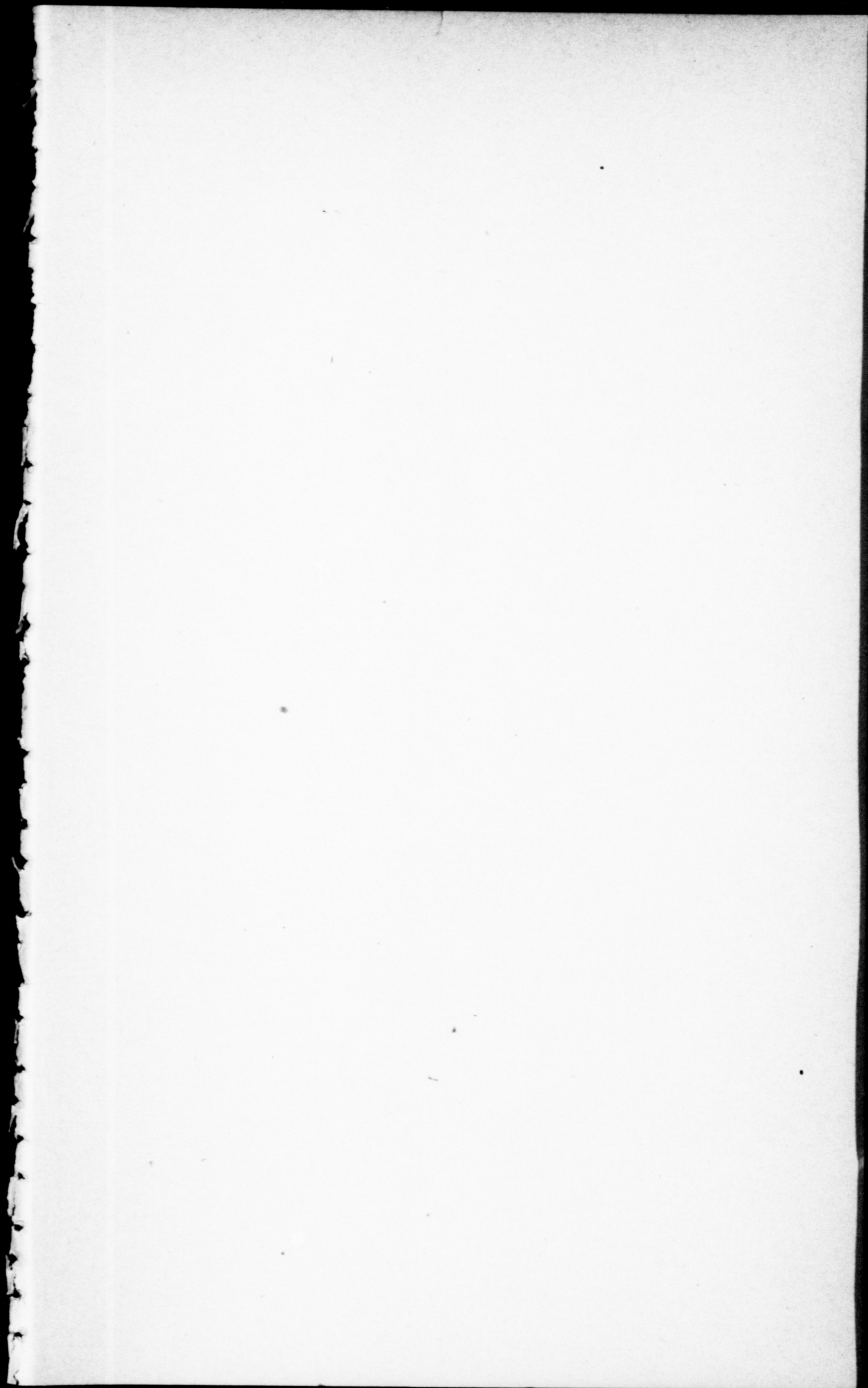
MARGARET BUDD, APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

BRIEF FOR APPELLANT.

C. C. MILLER,
DAVID WOLF,
Attorneys for Appellant.



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MARGARET BUDD, APPELLANT,

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BRIEF FOR APPELLANT.

Statement of Facts.

The appellant (defendant) was tried for murder in the first degree, alleged to have been committed upon one Mary Bragdon in the latter part of 1916. It was charged, and admitted by the defendant, that defendant had thrown a lighted lamp at the deceased, who died as the result of burns received therefrom. According to the uncontradicted evidence of both defendant and prosecuting witnesses, defendant and the deceased had been friends nearly all their lives, and there had been no previous trouble between them. The alleged assault took place in the defendant's own house, and

the only witnesses present—the defendant, and one Shields, produced by the Government—testified that the deceased forced her way into defendant's room and attacked her with a chair, striking her several times, and that the defendant repeatedly told her to "go away," and retreated as far as she could before throwing the lamp. The appellant was convicted of murder in the second degree.

Assignment of Errors.

The trial court erred:

1. In admitting evidence drawn from the defendant on cross-examination to the effect that she was married to a man other than the one with whom she was living.

2. In permitting the prosecuting attorney to refer in his argument to the fact that the defendant, though living with another man, was a married woman and had a child, and in failing to instruct the jury that these facts should not influence them in finding a verdict upon the charge of murder.

3. In personally cross-examining the defendant as to why she did not use a chair instead of a lamp to defend herself when attacked.

ARGUMENT.

1 and 2. The general rule, which seems to be universally accepted, is that on a trial for one crime, evidence that the defendant has committed another crime is inadmissible, except when it tends to prove: (1) Motive; (2) intent; (3) absence of mistake or accident; (4) a common scheme or plan; (5) the identity of the person charged with the crime on trial.

One of the leading cases upon this subject is the celebrated one of *People vs. Molineux*, 168 N. Y., 264. This case is also reported in 62 L. R. A., 193, where is an exhaustive case note, covering the point, which fully sustains the statement of the law made in the preceding paragraph herein. To it the court's attention is respectfully invited.

In the *Molineux* case the court discusses the question fully on pages 236 to 240, and points out the unfairness and danger to the defendant resulting from such evidence being heard by the jury.

The evidence objected to, tending generally to show that the defendant was married and had a child, but was living with a man not her husband, did not go to prove motive or intent in the crime for which she was on trial, and we think it obvious that it did not come under any of the exceptions to the general rule enumerated above. It did, however, in the language of the court just cited, "prompt a more ready belief that she might have committed the one (crime) with which she was charged * * * and predisposes the mind of the juror to believe the prisoner guilty."

The rule is not limited to evidence offered by the prosecution, but applies also to matters brought out by cross-examination of the defendant.

Note 62, L. R. A., 345-7.

And to statements or insinuations by the prosecution as to other crimes or bad conduct.

Id., 348-50.

When evidence of other crimes has been improperly introduced, it is held that this cannot be cured by an instruction to the jury to disregard it.

Boyd vs. U. S., 142 U. S., 450.

In the case at bar no such instruction was given.

3. The third assignment of error is as to the part taken by the trial judge in cross-examining the defendant. It is, of course, admitted that in the Federal courts a judge may participate in a trial to some extent, and may comment on the evidence, provided he informs the jury that they are to find the facts. But even in Federal courts the power thus allowed to the trial judge is not absolute and unlimited, and should not be exercised in such a way as to prejudice the jury. "Argumentative matter should not be thrown into the scales of justice by the judicial officer who holds them" (*Coberth vs. Great Atlantic & P. Tea Co.*, 36 App. D. C., 575, quoting from *Starr vs. U. S.*, 153 U. S., 614).

"The impartiality of the judge—his avoidance of the appearance of becoming the advocate of either one side or the other of the pending controversy which is required by the conflict of the evidence to be finally submitted to the jury—is a fundamental and essential rule of especial importance in criminal cases. The importance and power of his office, and the theory and rule requiring impartial conduct on his part, make his slightest action of great weight with the jury. While we are of opinion that the judge is permitted to take part impartially in the examination or cross-examination of witnesses, we can readily see that, if he takes upon himself the burden of the cross-examination of defendant's witnesses, when the Government is represented by competent attorneys,

and conducts the examination in a manner hostile to the defendant and the witnesses, the impression would probably be produced on the minds of the jury that the judge was of the fixed opinion that the defendant was guilty, and should be convicted. This would not be fair to the defendant, for he is entitled to the benefit of the presumption of innocence by both judge and jury till his guilt is proved. If the jury is inadvertently led to believe that the judge does not regard that presumption, they may also disregard it.

"A cross-examination that would be unobjectionable when conducted by the prosecuting attorney might unduly prejudice the defendant when it is conducted by the trial judge. Besides, the defendant's counsel is placed at a disadvantage, as they might hesitate to make objections and reserve exceptions to the judge's examination, because, if they make objections, unlike the effect of their objections to questions by opposing counsel, it will appear to the jury that there is direct conflict between them and the court. * * * Counsel are expected to maintain an attitude of respect and deference toward the judge, and this attitude is maintained without difficulty when the judge confines his activities to the usual judicial duties, and the judge can more easily treat counsel with the respect due an officer of the court in the performance of a duty if he avoids the performance of the duties incumbent properly upon an attorney representing one side of the case. The evidence, taken as a whole, might be so conclusive of the defendant's guilt that an appellate court would not be justified in interfering with the judgment on this account alone. But in a case where there is substantial conflict in the evidence as to the essential points that were required to be submitted to the jury, the course of the judge in unnecessarily assuming to perform the duties incumbent primarily upon others might make it the duty of an appellate court, on this ground alone, to grant a new trial."

Adler vs. U. S., 182 Fed., 472 (C. C. A., 1910).

Where he (the judge) takes the cross-examination out of the hands of competent counsel, there is danger that the jury, from this fact alone, may draw conclusions unfavorable to the witness and to the party on whose behalf the witness is called.

Berwind-White Coal Co. vs. Firment (C. C. A.), 170 Fed., 151.

We think the cross-examination conducted by the trial judge in this case tended to cause the impression upon the jury that he did not believe her testimony or her ground of defense, and that the jury were thereby unfavorably influenced against her.

Moreover, we submit that the questions repeatedly asked her as to why she did not take a chair instead of the lamp to defend herself were based upon, or at least conveyed the impression to the jury, of an erroneous proposition of law. The line of questions referred to clearly implied—and the jury no doubt so understood them—that the defendant should have had some good reason or excuse for catching up the lamp instead of a chair, and that she was bound to take a chair to defend herself, if possible. The defendant's testimony in chief (and that of the only witness) was that the deceased advanced toward her, although told to "go away," and struck her several times with a chair. The defendant was being attacked in her own house, and owed no duty to retreat. Nevertheless she did retreat as far as she could do so. In such circumstances, and in a position of peril—actually under the blows of her assailant—there was, and could have been, no duty or obligation upon her to pick and choose between articles with which to defend herself. She was not bound to take a chair rather than the lamp, and we think that the questions put to her by the court, which clearly indicated otherwise, were unfair and extremely prejudicial to the defendant's cause.

We believe that there were other errors committed during the trial to which no exceptions were taken, and which we

cannot, therefore, assign and argue, but which this court may correct if it should think proper.

It is submitted that upon the whole record the judgment of the trial court was erroneous, and that a new trial should be granted.

Respectfully submitted,

C. C. MILLER,
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Attorneys for Appellant.